

SMALL WIRELESS FACILITIES REGULATIONS

Item 4a: Receive Update on Draft Small Wireless Facilities Ordinance and Draft Resolution with Small Wireless Facilities Design and Siting Guidelines, Engineering Design Standards, and Standard Conditions of Approval and Provide Feedback to Staff on Draft Ordinance and Resolution

City Council Special Meeting

May 14, 2019

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Community & Economic Development Director



Agenda

- I. Objective
- II. Background – Federal Regulations
- III. Planning Commission Study Sessions
- IV. Community Engagement Session
- V. Draft Ordinance Overview
- VI. Draft Resolution Overview
- VII. Planning Commission Review
- VIII. Council Feedback
- IX. Questions

Objective

- Provide feedback to staff on the draft regulations for small wireless facilities in the public right-of-way and utility easements.

Background – Federal Regulation

Small Wireless Facilities

- Small low-powered antennas mounted on a structure that is typically 50 feet or less in height
- Installed on a range of facilities in public right-of-way
 - Utility poles
 - Street lights
 - Traffic signals
 - New poles in the right-of-way
- Supporting wireless equipment, such as power cabinets
- Safety of facilities is primarily regulated by the California Public Utilities Commission



New Federal Regulations

- Federal Communications Commission (FCC) approved federal small wireless facility rules: “Accelerating Wireless Broadband Deployment by Removing Barriers to Infrastructure Investment”
- Effective in part on January 14, 2019 and in part on April 15, 2019
- Clarifies and restricts the authority of state and local governments to regulate small wireless facilities.
- Easier and faster for wireless companies to quickly expand and enhance their networks.

New Federal Regulations

- Wireless providers and telephone companies have a right to use the public rights-of-way and utility infrastructure for their facilities
- Local government can regulate the placement and aesthetics of an installation (within state and federal limits)
- Regulations and permit decisions must comply with limits in state and federal law
- Based on substantial evidence and cannot effectively prohibit service

New Federal Regulations

- Cities can adopt **objective** aesthetic standards
- Standards must be **reasonable and no more burdensome** than those applied to other types of infrastructure in the right-of-way
- Restrictive application processing “shot clocks” set firm deadlines for processing:
 - **60 days** for small cell wireless facility attachments to existing poles or structures
 - **90 days** for small cell wireless facilities on new poles or structures

Update: FCC Order litigation

- Many appeals filed by local governments and industry. San Bruno is part of a coalition of 50+ localities
- On December 10, FCC denied request to stay the order pending appeal
- Coalition is continuing to litigate the case on behalf of the member cities
- Reconsideration petition filed

Aesthetic Standards

- Aesthetics standards are those that regulate the design and location of a wireless facility
- Common Aesthetic Categories
 - Location: Protecting historic, cultural and scenic resources
 - Camouflaging: Colors, painting, concealment, so long as required of other similar infrastructure, as well
 - Height & Size: Presumably reasonable, so long as technically feasible and required of other similar infrastructure
 - Spacing Recommendations: Spacing recommendations may be reasonable aesthetic requirements to avoid excessive overhead “clutter”

How is Our Community Responding?

- Joined with other cities to appeal the FCC order
- Website developed with extensive information and FAQ – updates posted frequently
- Interested parties list to notify public of all meetings
- Three Planning Commission Study Sessions
- One Planning Commission meeting to review Draft Ordinance and Resolution
- Community Engagement Meeting
- New Ordinance, application process, and regulations developed in response to FCC Regulations

Planning Commission Study Sessions

Planning Commission Study Sessions

- Meetings:
 - October 12, 2018
 - November 20, 2018
 - January 15, 2019
- Review and education on Federal Regulations
- Examination of current City Regulations
- Review of design and siting criteria from other communities
- Recommended approaches for local regulation of small wireless facilities

Community Engagement Session

Community Engagement Session

- Three feedback stations
- Community input forms



Types of Facilities

- Facilities attached to existing wooden utility poles and utility lines- top extension or side arm mounting
- Facilities attached to streetlights and traffic signal control poles
- New freestanding poles



Community Engagement Feedback

- Preference for small wireless facilities installed on streetlights, with all equipment enclosed within the pole
- Preference for all equipment mounted on wooden utility poles to be shrouded with antennas located at the top, bayonet style, and shrouded within a streamlined cylinder
- Location preference was for mid-block siting and at shared property lines instead of in front of residences/businesses



Draft Ordinance and Resolution

Guiding Policy Principles

- **Achieve compliance with new federal law**
 - Objective design and siting standards
 - Ensure application processing compliance with Shot Clocks of 60 or 90 days
 - Ensure decision making process is based on substantial evidence and does not effectively prohibit service
- **Review of placement and aesthetics**
 - Concealment / Camouflaging
 - Height and Size
 - Location
 - Mounting

Draft Ordinance Overview

- Ordinance will amend Municipal Code Title 8: Streets, Sidewalks, and Rights-of-Way
- Utilities and structures within the City's public rights-of-way are regulated by Title 8
- Small wireless facilities will be administered by the City's Public Works Department through a newly developed Wireless Facility Permit process

Draft Ordinance Overview

- Small wireless facilities will no longer be regulated by Title 12 Land Use
- Current Zoning Code regulations will remain applicable to macro wireless facilities on private property with the current Conditional Use Permit process remaining

Key Features of the Application Process

- Director of Public Works, or his/her designee will be decision maker
- Peer and Independent Consultant Review
- Compliance with all aesthetic design guidelines and engineering standards
- Standard Conditions of Approval



Key Features of the Draft Ordinance

- 300 foot public notification provided at the time of application
- Copy of Decision provided to public if requested
- Right of appeal to the City Manager
- Similar or not atypical to other administrative permit processes
- Recommended to ensure compliance with Shot Clocks of 60 or 90 days

Application Process Submittal Timeline

Day 1  Day 60
or 90

Items to Complete:

- Application submittal
- Public Notice
- Review of Application
- Decision on Application
- Appeal Deadline

Key Features of the Draft Design and Siting Guidelines

- Installations should be concealed to the maximum extent feasible
- One facility per structure
- Equipment should be located entirely on the pole in a vertical arrangement and shrouded/concealed
- Supporting equipment should be undergrounded in areas where undergrounding has occurred

Key Features of the Draft Design and Siting Guidelines

- Should not be installed such that the facility damages existing trees
- Must comply with City noise regulations
- The top of the antenna if top mounted should be no higher than 48" above the minimum separation from power supply lines required by law
- Maximum 50 feet in height (revised recommendation)

Key Features of the Draft Design and Siting Guidelines

Permit three types of small wireless facilities:

- Facilities attached to existing wooden utility poles and utility lines
- Facilities attached to streetlights and traffic signal control poles
- New freestanding poles

Key Features of the Draft Design and Siting Guidelines

- Siting location preferences in which Industrial and Combining Industrial zoning districts are the highest ranked preference and low-density residential districts with single-family or two-family residential uses are the **least preferred locations**
- New poles are required to replicate the materials, color, and finish of existing infrastructure nearby
- Facilities should be no closer than **300 feet away**, radially, from another small wireless facility

Permit Requirements

- Maintenance of the facility
- Compliance with approved plans
- Inspection and access by City staff
- Insurance and indemnity provisions to protect the City
- Performance bonds
- Traffic control and non-interference with City utilities and operations
- Maintenance obligations
- Compliance and testing to ensure full adherence to FCC rules for RF emissions

Planning Commission Review

Planning Commission Review – March 2019

- **Maximum Facility Height**

Initial Staff Recommendation: 35 feet

Commission: Discussed and considered 50 feet but no consensus

Revised Staff Recommendation: 50 feet for flexibility

- **Public Notification**

Commission recommendation: 500 feet (max. range of facility)

Staff recommendation: 300 feet for consistency

Planning Commission Review

- **Appeals Review**

Commission recommendation: Consider a public meeting, rather than City Manager

Staff recommendation: City Manager for consistency with other administrative permit processes and to ensure applications can be processed within Shot Clock timeframes.

Revised: Change the appeal filing timeframe from two days to five days

- **Other Ordinance and Resolution Comments:**

In many cases, these are related to clarification and do not make any material changes to the Ordinance or processing requirements. These edits have been made in the revised draft Ordinance

Received Public Comments on the Draft Regulations

- Public comment letters received
- Staff made final change as a result of the letters received prior to publication of the Draft regulations
- Other concerns raised such as public notification requirements that staff believes are in compliance with the provisions of the Order that relate to these items

Council Feedback

Items for Council to Consider

- **General Input on Draft Ordinance and Resolution**

Tonight's Action – Request to City Council

- Provide feedback to staff on the draft regulations for small wireless facilities in the public right-of-way and utility easements

Next Step:

- Staff will finalize the Ordinance and Resolution for adoption by the City Council at a public hearing

QUESTIONS?

Flow Chart for Permanent Wireless Facility Permit in the Public Right-of-Way

